

## Internal Revenue Service

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### Legend

X =

A =

B =

State =  
Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Dear :

This letter responds to a letter dated December 8, 2011, and subsequent correspondence, submitted by X's authorized representative on behalf of X, requesting inadvertent termination relief under § 1362(f) of the Internal Revenue Code.

The information submitted states that X was formed under the laws of State and elected to be treated as an S corporation effective Date 1. Before Date 2, eligible S

corporation shareholders owned all of the stock of X. On Date 2, however, A, a partnership which is an ineligible S corporation shareholder under § 1361(b)(1)(B), acquired shares of X. Further, on Date 3, A acquired additional shares of X. X represents that upon discovery of this error in Date 4, it promptly took remedial action. Effective Date 5, A transferred all of its X shares to B. B is an eligible S corporation shareholder and has been a shareholder of X since before Date 2.

X represents that the transfer X of stock to A, an ineligible shareholder, was not motivated by tax avoidance or retroactive tax planning. X and its shareholders have continued to treat X as an S corporation at all times. X, its shareholders and A agree to make any adjustments (consistent with the treatment of X as an S corporation) that the Secretary may require.

Section 1361(a)(1) of the Code defines an “S corporation” as a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1)(B) provides that provides that the term “small business corporation” means a domestic corporation which is not an ineligible corporation and which does not have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual.

Section 1362(d)(2) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the first day of the taxable year for which a corporation is an S corporation) such corporation ceases to be a small business corporation. A termination of an S corporation election under § 1362(d)(2) is effective on and after the date of cessation.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents, or (B) was terminated under paragraph (2) or (3) of § 1362(d), (2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in such ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation, or (B) to acquire the required shareholder consents, and (4) the corporation, and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such ineffectiveness or termination, the corporation shall be treated as an S corporation during the period specified by the Secretary.

Based solely on the information submitted and the representations made, we conclude that X's S corporation election terminated on Date 2, when X stock was transferred to A, an ineligible shareholder, and would have terminated on Date 3, had it not already terminated. We also conclude that these terminations were inadvertent within the meaning of § 1362(f), and that under the provisions of § 1362(f), X will be treated as an S corporation from Date 2, and thereafter, provided that X's S election was valid and was not otherwise terminated.

As a condition for this ruling, B shall take into income all X income allocated to A between Date 2 and Date 5. Further, B shall report this income on tax returns jointly filed with B's spouse. Any amended returns necessary to comply with this condition must be filed within 120 days of the date of this letter. A copy of this letter should be attached to any such return. If B fails to comply with these conditions, this ruling shall be null and void.

Except as specifically ruled upon above, we express no opinion concerning the federal tax consequences of the transactions described above under any other provisions of the Code. Specifically, no opinion is expressed on whether X was otherwise eligible to be treated as an S corporation.

This ruling is directed only to the taxpayer who requested it. Section § 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,

Bradford R. Poston  
Senior Counsel, Branch 2  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures: (2)  
Copy of this letter  
Copy for § 6110 purposes

cc: